

SB Civil 1st Appeal No.24/1984

Date of Order:

09th January, 2007

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Vijay Bishnoi for the appellant/s.

Mr.Arun Bhansali for the respondent/s.

Heard learned counsel for the parties.

This appeal arises out of the judgment of the Court of Additional District Judge, Nohar in Civil Original Case No.09/1981 dated 25.01.1984. The suit was filed by Mangal, surviving son of Matu Ram. Another son died during the lifetime of the father and respondent Imrati having remarried before the opening of the succession, the suit was decreed by the trial court and it was held that appellant Imrati had no right and she has been divested from the property of Matu Ram.

Principle question which was raised before this Court was neither stated in the written statement nor agitated in the trial court. It related to the jurisdiction of the civil court. The provisions of Rajasthan Tenancy Act 1955 as contained in Section 207 provided

that the suit relating to tenancy right in a revenue land are cognisable only by the revenue court. Thus the injunction granted by the civil court is non-est and therefore, the decree deserves to be set aside. In this case this objection having not taken at the earlier stage goes a long way. The basic prayer of the suit says that it is for declaration of the right of Mangal in the property of his deceased father. It is in the back ground that the other son Shanker died during the lifetime of Matu Ram. Appellant Imrati remarried, and since she remarried she was not entitled to have right over the property. Section 24 of the Hindu Succession Act 1956 (hereinafter referred to as 'the Act of 1956' reads as under:

“S.24. Certain widows re-marrying may not inherit s widows,- Any heir who is related to an intestate as the widow of pre-deceased son, the widow of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate s such widow, if on the date the succession opens, she has re-married.”

The above quoted Section 24 of the Act of 1956 prohibits the widow of a predeceased son from succession of the property if she remarries before succession opens. That being the position the succession having opened after remarriage of the widow,

the question of jurisdiction becomes irrelevant. The suit as framed related to the declaration of the rights under succession. Thus the question of maintainability of suit as raised is not available to the appellant.

The facts are found established in the background that after the death of Shanker, s/o Matu Ram, Imrati has remarried. She has not only remarried but married Mangal the plaintiff and had two children . Thereafter she deserted Mangal and her remarriage has dis- entitled her from succession. That being the position, the decree is not liable to be interfered. She lost her rights in the property of Matu Ram. Therefore, injunction was rightly granted. No force. The appeal is dismissed.

(BHAGWATI PRASAD), J.